



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 16, 2004

Ms. M. Ann Montgomery
County & District Attorney
Ellis County
1201 North Highway 77
Waxahachie, Texas 75165-5140

OR2004-9696

Dear Ms. Montgomery:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 213216.

The Ellis County Sheriff's Office (the "sheriff") received a request for information related to three "incident reports and their status." You state that some responsive information has been released to the requestor. You claim that the remaining requested information is excepted from disclosure under section 552.108 of the Government Code. We also understand you to claim that some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108 of the Government Code provides in pertinent part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime... if:

...

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication; [and]

Gov't Code § 552.108(a)(2). A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why section 552.108 is applicable. *See* Gov't Code § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. You state that the submitted information pertains to "closed criminal investigations that did not result in charges being filed against the suspect." Based on your representation and our review of the submitted information, we agree that section 552.108(a)(2) is applicable to most of the submitted information. You inform us, however, that the July 2, 2004 call card relates to a criminal case in which a fine was paid and the file closed. Upon review of your comments and the submitted information, we find you have not adequately demonstrated that the call card relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. We therefore determine that you have not established that section 552.108(a)(2) is applicable to the call card. Consequently, the sheriff may not withhold any portion of the call card under section 552.108(a)(2) of the Government Code.

We note that basic information, which is normally found on the front page of an offense report, is generally considered public and not excepted from disclosure under section 552.108(c). *See generally* Gov't Code § 552.108(c); *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). We believe such basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 185. Thus, with the exception of basic information and the information on the call card, the remaining records that you seek to withhold are excepted from disclosure under section 552.108(a)(2) of the Government Code.

Finally, in regard to the submitted call card, chapter 772 of the Health and Safety Code authorizes the development of local emergency communications districts.¹ Sections 772.118, 772.218, and 772.318 of the Health and Safety Code apply only to an emergency 9-1-1 district established in accordance with chapter 772. *See* Open Records Decision No. 649 (1996). These statutes make confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a service supplier. *Id.* at 2. Section 772.118 applies to emergency communication districts for counties with a population over two million. Section 772.218 applies to emergency communication districts for counties with a population over 860,000. Section 772.318 applies to emergency communication districts for counties with a population over 20,000. Subchapter E, which applies to counties with populations over 1.5 million, does not contain a confidentiality provision regarding 9-1-1 telephone

¹Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes.

numbers and addresses. *See* Health & Safety Code §§ 772.401, *et seq.* Thus, if Ellis County is part of an emergency communication district established under section 772.118, 772.218, or 772.318, then the caller's originating address and phone number is excepted from public disclosure based on section 552.101 as information deemed confidential by statute. However, to the extent that the caller's originating address and phone number was not provided by a 9-1-1 service supplier to a 9-1-1 district subject to section 772.118, 772.218, or 772.318, they are not confidential and must be released.

In summary, we conclude that: 1) with the exception of basic offense and arrest information and the call card, the information that you seek to withhold is excepted from disclosure under section 552.108 of the Government Code; 2) if Ellis County is part of an emergency communication district established under section 772.118, 772.218, or 772.318, the caller's originating address and phone number must be withheld under section 552.101 of the Government Code; and 3) to the extent that the caller's originating address and phone number were not provided by a 9-1-1 service supplier to a 9-1-1 district subject to section 772.118, 772.218, or 772.318, they must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877)673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512)475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/jh

Ref: ID# 213216
Enc. Submitted documents

c: Ms. Susan P. Clair
307 Magellan Circle
Ferris, Texas 75125
(w/o enclosures)